NARAIN v. PUBLIC PROSECUTOR

[R. Cr. J. (Zakaria Yatim J.) March 26, 1987]

[Kuala Lumpur – Federal Territory Criminal Revision No. 4 of 1987]

Criminal Law and Procedure – Charge of rape – Accused found guilty of having carnal knowledge with girl under 16 years of age – Charge not amended – Conviction set aside – Penal Code, s. 376 – Woman and Girls Protection Act, 1973, s. 16(1)(l) – Criminal Procedure Code (F.M.S. Cap. 6), ss. 158(i), 159, 173(i) & 323.

In this case the accused had been tried on three charges of rape under section 376 of the Penal Code. He was called for the defence and after the close of the defence case the learned President found the accused guilty under section 16(L)(1) of the Women and Girls Protection Act, 1973 for having carnal knowledge with the complainant, who was under 16 years of age. The accused was convicted and sentenced to one year imprisonment. The case was called for revision.

Held, the learned President was wrong in convicting the accused under section 16(1)(*l*) of the Women and Girls Protection Act 1973 without framing a charge under that section and without reading and explaining the charge to the accused. The accused should be retried on the charge under the Women and Girls Protection Act.

CRIMINAL REVISION.

Azlan bin Abdul Halim (Deputy Public Prosecutor) for the Public Prosecutor.

Americk Sidhu for the appellant.

Zakaria Yatim J.: At the request of Mr. A. Sidhu, counsel for the accused, I called this case for revision under section 323 of the Criminal Procedure Code.

The accused was tried in the Sessions Court, Kuala Lumpur, on three charges of rape punishable under section 376 of the Penal Code. At the close of the case for the prosecution, the President found that there was a *prima facie* case against the accused on the three charges and called upon the accused to make his defence. After the defence had closed its case, the President found the accused guilty of an offence under section 16(1)(*l*) of the Women and Girls Protection Act, 1973 for having carnal knowledge with the complainant, who was under 16 years of age. She then sentenced the accused to one-year imprisonment. Mr. Sidhu applied for stay of execution pending appeal as well as for the bail to be extended. The President granted stay of execution but increased the bail from $5,000.00 to $8,000.00.

In my judgment the President was wrong in convicting the accused under section 16(1)(*l*) of the Women and Girls Protection Act, 1973 without framing a charge under that section and without reading and explaining the charge to the Accused. What the President should have done was to frame a charge under that section against the accused and to have the charge read and explained to the accused. Under section 158(i) of the Criminal Procedure Code, the President is entitled to alter or add to any charge at any time before judgment is pronounced. Section 173(i) clearly states that the amended charge shall be read to the accused and he shall again be asked whether he is guilty or whether he has any defence to make. After the amended charge has been read and explained, the accused should be called upon to make his plea. See section 159 of the Criminal Procedure Code. If he pleads guilty, then the President should proceed with the conviction and sentence. On the other hand, if the accused claims trial to the new charge then the President should hear his defence to the new charge and make her finding accordingly.

For the reasons stated above, I order this case be re-registered in the Magistrates Court and a new trial be held in that Court against the accused under section 16(1)(*l*) of the Women and Girls Protection Act, 1973.

With regard to bail, I agree with Mr. Sidhu that a bail of $8,000/– is manifestly excessive. I accordingly reduce the bail to $2,000/– and one surety pending the new trial in the Magistrates Court.

Order accordingly.

Solicitors: *Americk Sidhu & Co.*